Supreme Court, U. S.
FILED
MAY 27 1980
MICHAEL RODAK, JR., CLERK

Nos. 79-1404, 79-1408, 79-1414, 79-1415, and 79-1489

In the Supreme Court of the United States

OCTOBER TERM, 1979

PENNHURST STATE SCHOOL AND HOSPITAL, ET AL., PETITIONERS
v.
TERRI LEE HALDERMAN, ET AL.

MAYOR OF CITY OF PHILADELPHIA, ET AL., PETITIONERS
v.
TERRI LEE HALDERMAN, ET AL.

PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, ET AL., PETITIONERS
v.
PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.

COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATORS FOR BUCKS COUNTY, ET AL., PETITIONERS
v.
TERRI LEE HALDERMAN, ET AL.

PENNHURST PARENTS-STAFF ASSOCIATION, PETITIONER
v.
TERRI LEE HALDERMAN, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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v.

TERRI LEE HALDERMAN, ET AL.

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No. 79-1414

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PENNHURST STATE SCHOOL AND HOSPITAL, ET AL.

No. 79-1415

COMMISSIONERS AND MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATORS FOR BUCKS COUNTY, ET AL., PETITIONERS

v.

TERRI LEE HALDERMAN, ET AL.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 92a-196a)[1] is reported at 612 F. 2d 84; the opinion

[1] "Pet. App." refers to the separately bound Joint Appendix in No. 79-1404.

of the district court (Pet. App. 6a-75a) is reported at 446 F. Supp. 1295.

JURISDICTION

The judgment of the court of appeals was entered on December 13, 1979. The petitions in Nos. 79-1404, 79-1414, 79-1408 and 79-1415 were filed on March 12, 1980, and the petition in No. 79-1489 was filed on March 20, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether Pennsylvania law provides mentally retarded persons in Pennsylvania a right to care and habilitation appropriate to their individual needs, and whether the right is judicially enforceable against local, as well as state, officials.

2. Whether the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6001 *et seq.*, provides mentally retarded persons in the custody of a state receiving federal funds under the Act a judicially enforceable right to receive care and habilitation appropriate to their needs in the setting that least restricts their personal liberty.

3. Whether the district court abused its discretion under Rule 24(b), Fed. R. Civ. P., by allowing the United States to intervene.

4. Whether the plaintiff class should have been decertified.

5. Whether the remedy violates the principles of federalism and exceeds the authority of federal courts.

STATEMENT

A. Procedural History

This case began with the filing of a class action in the United States District Court for the Eastern District of Pennsylvania by residents of the Pennhurst State School and Hospital, an institution in Pennsylvania for residential care and habilitation of mentally retarded persons.[2] The certified plaintiff class is all persons "who * * * have been or may become residents of Pennhurst" (Pet. App. 14a). The Pennsylvania Association for Retarded Citizens, several additional individual mentally retarded plaintiffs, and the United States were permitted to intervene as plaintiffs.[3] Defendants are various state and local officials having the responsibility for the operation of Pennhurst and for placing mentally retarded persons there as residents. After a lengthy trial, the district court found that conditions at Pennhurst were so inadequate and debilitating that they abridged plain-

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[2] The district court explained that: " '[h]abilitation' is the term of art used to refer to that education, training and care required by retarded individuals to reach their maximum development" (Pet. App. 10a).

[3] Following trial, and after notice of appeal had been filed, petitioners in No. 79-1489 sought to intervene in the district court and intervention was denied. The denial was affirmed by the court of appeals (79-1489 Pet. App. 213a-217a), but that court subsequently allowed intervention for the purpose of seeking certiorari (79-1489 Pet. 6 n.9).

tiffs' rights under the Due Process Clause, the Equal Protection Clause, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and Pennsylvania law (Pa. Stat. Ann. tit. 50, § 4201 *et seq.* (Purdon 1969)). The district court ordered that certain interim steps be taken to improve conditions at Pennhurst.[4] It also ordered defendants to make plans to close Pennhurst, and to remove its residents to more appropriate and less restrictive community living arrangements, in accordance with the deinstitutionalization policy that has been adopted in Pennsylvania.

On appeal, the en banc court of appeals held that by subjecting plaintiffs to the conditions at Pennhurst, defendants were violating both Pennsylvania statutes (Pa. Stat. Ann. tit. 50, § 4201 *et seq.* (Purdon 1969)) and the Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6002-6081).[5] However, the court of appeals reversed the district court's order requiring the eventual closing of Pennhurst, and instead directed the district court, or the special master appointed by the court, to supervise the defendants' determinations, on a case-by-case basis, of the proper placement of Pennhurst residents (Pet. App. 150a-151a). The court said (Pet. App. 158a-160a):

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[4] The district court first attempted, without success, to obtain from the defendants proposals for appropriate relief to correct the harmful conditions found to exist (Pet. App. 77a-79a).

[5] The court of appeals accordingly did not decide whether petitioners' conduct violated the Constitution or Section 504 of the Rehabilitation Act of 1973 (Pet. App. 131a & n.28, 141a).

> Of course, deinstitutionalization is the favored approach to habilitation * * *. Thus, on remand, the court or the Master should engage a presumption in favor of placing individuals in [community living arrangements]. But the special needs and desires of individual patients must not be neglected in the process.
>
> * * * * *
>
> [S]tate and federal laws plainly require that if Pennhurst is to remain open for at least some patients, it must be dramatically improved so as to provide adequate habilitation. Neither should our willingness to permit retention of Pennhurst as an institution available for those who cannot be treated in any less restrictive environment be construed as an invitation to the appellants to desist from opening up alternative community facilities.

Three judges dissented (Pet. App. 162a). They would have found that conditions at Pennhurst violated plaintiffs' constitutional and statutory rights, but would have limited relief to correcting these conditions.

B. The Findings

The Pennhurst State School and Hospital, which is owned and operated by the State of Pennsylvania, has been overcrowded and understaffed since its founding in 1908. At the time of trial, the resident population was 1230 mentally retarded persons, although in the early 1960's there were 4000 residents (Pet. App. 19a). Residents sleep in large overcrowded wards and spend their days in large day

rooms; their schedules are determined by the needs of the institution (Pet. App. 21a).

All parties agreed at trial that Pennhurst "as an institution is inappropriate and inadequate for the habilitation of the retarded" (Pet. App. 23a).[6] The district court found the "average resident receives only 1½ hours of programming per weekday and no programming on weekends" (*id.* at 24a); because of staff shortages, residents are not placed in special programs to which they are referred (*id.* at 25a). For example, as of April 1977, 511 residents were on the waiting list for occupational therapy; 106 residents were on the waiting list for speech therapy; only 143 of the three to four hundred residents who needed physical therapy to prevent physical deterioration were receiving it. Moreover, 75 to 100 residents lacked specially adapted wheelchairs that they needed; only 51 of 300 residents who needed hearing aids had been provided them (*id.* at 25a-26a).

Proper habilitation cannot be provided to retarded persons unless those responsible for providing such programs are aware of individual needs. Yet, the district court found that the relevant patient evaluations at Pennhurst did not meet professional standards (Pet. App. 27a).

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[6] Pennsylvania's purpose in maintaining mentally retarded persons in institutions is "[t]o assure * * * the availability and equitable provision of adequate * * * mental retardation services for all persons who need them * * *." Pa. Stat. Ann. tit. 50, § 4201(1) (Purdon 1969).

Although a committee at Pennhurst recommended against isolating residents except in medical emergencies and specifically recommended against the use of isolation as punishment, isolation was still used, simply because there was insufficient staff to provide the attention to residents that would make isolation unnecessary. Physical restraints were used for the same reason and have been physically harmful, including causing one death by strangulation (Pet. App. 31a-32a).

Psychotraupic drugs were used to control residents rather than to treat them, and their use was inadequately monitored. The administration of such drugs has had debilitating or hazardous side effects and has impeded, rather than enhanced, habilitation of residents (Pet. App. 33a).

The physical environment at Pennhurst was hazardous and unsanitary. Pinworm and infectious diseases were common. The environment not only was not conducive to learning new skills, it contributed to losing skills already learned. Injury of residents by other residents and through self-abuse was common: in January 1977, there were 833 minor and 25 major injuries reported (Pet. App. 34a-35a).

Pennsylvania accepts the "normalization" theory that a retarded person will develop and learn more if placed in an environment that is as close to a normal one as is possible. Toward that end, the state has established "community living arrangements" in the five-county area from which the Pennhurst population is drawn. However, there are insufficient

living units, vocational opportunities, and day care facilities in the area to provide placement for all Pennhurst residents; from 1972 until trial, only 186 Pennhurst residents were transferred into community living arrangements (Pet. App. 43a).[7]

These findings were not disputed on appeal; they were affirmed by the court of appeals (Pet. App. 105a-106a).

ARGUMENT

1. The court of appeals held that Pennsylvania law requires petitioners to furnish mentally retarded persons adequate treatment and habilitation (Pet. App. 125a-127a). Although Pennsylvania's Mental Health and Mental Retardation Act of 1966, Pa. Stat. Ann. tit. 50, § 4201 *et seq.* (Purdon 1969), is unconstrued by the highest state court, decisions of lower state and federal courts fully support the construction given it by the court of appeals. *E.g.*, *In re Joyce Z*, 4 Pa. D. & C. 3d 596 (C. P., Allegheny Co. 1975); *County of Allegheny* v. *Commw., Dept. of Pub. Welfare*, 381 A.2d 1014, 1016 (Pa. Commw. Ct. 1978); *Eubanks* v. *Clarke*, 434 F. Supp. 1022, 1027 (E.D. Pa. 1977). Thus, state law requires the state and county petitioners to furnish "a comprehensive program for

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[7] Nevertheless, the state petitioners "agreed that the retarded should be removed from Pennhurst and readily admitted that the only reason that the litigation was necessary was because they wished to accomplish the closing of Pennhurst as a residence for the retarded, pursuant to their own schedule which was vague and indefinite" (Pet. App. 78a, 42a).

the care, treatment and rehabilitation of mentally disabled and mentally retarded persons." *Hoolick* v. *Retreat State Hospital*, 354 A.2d 609, 611 (Pa. Commw. Ct. 1976), aff'd, 382 A.2d 739 (Sup. Ct. 1978). It is the duty of the state petitioners under Pa. Stat. Ann. tit. 50, § 4201(1) (Purdon 1969):

> To assure within the State the availability and equitable provision of adequate mental retardation services for all persons who need them * * *.

As the findings made clear, the confinement of mentally retarded persons in Pennhurst is neither "adequate" nor "equitable": the district court found, and the court of appeals affirmed, that many of Pennhurst's residents not only receive inadequate services, but are confined in an environment that produces regression in skills and physical and mental harm.

The petitioning city and county officials claim that state law places no responsibility on them for the wrong done to Pennhurst residents (79-1408 Pet. 9-10; 79-1415 Pet. 15). But, as the court of appeals observed (Pet. App. 130a):

> the Counties have joined inextricably in the states' provision—or lack of provision—of treatment * * * the Counties arrange for admission to Pennhurst through their operation of Base Service Units. Often, the district court found, the County Base Service Units fail to investigate alternatives to institutional placements, thereby consigning the mentally retarded to inadequate living conditions. * * * Having thus participated for so long in the institutional practices at Penn-

> hurst, the Counties cannot at this late date escape—by pointing the finger of responsibility elsewhere—the statutory duty to provide adequate habilitation.

The relief ordered by the court of appeals (Pet. App. 155a-160a) is entirely consistent with the statutory responsibilities of petitioners. That relief is premised on three principles: First, the deinstitutionalization process established by the Pennsylvania legislature (see Pet. App. 43a-44a) should continue. Second, because "[t]he state statute, like the federal statute, was focused on *individual* needs" (Pet. App. 157a), the court of appeals reversed the district court's requirement that Pennhurst be eliminated as an institution caring for mentally retarded persons; individuals who will benefit from institutionalization and would be harmed by a less restrictive alternative facility may still be placed in and treated at Pennhurst (*id.* at 158a-159a).[8] Third, in whatever facility individuals are placed, the state and local petitioners must provide them with adequate habilitative services as required by state law; this means that the harmful conditions found to exist at Pennhurst must be eliminated (*id.* at 160a-161a).

Without furnishing any Pennsylvania authority suggesting that the courts' treatment of respondents' state law claim is "in conflict with applicable state

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[8] This modification of the relief ordered by the district court satisfies the intervening petitioner's concern (79-1489 Pet. 9, 16 n.18, 18) that severely mentally retarded persons should not be thrust into settings to which they cannot adjust.

* * * law" (Rule 19(1)(b) of the Rules of this Court), petitioners ask this Court to reverse purely Pennsylvania law decisions of two federal courts sitting in Pennsylvania. Cf. *Huddleston* v. *Dwyer*, 322 U.S. 232, 237 (1944); *Estate of Spiegel* v. *Commissioner*, 335 U.S. 701, 707-708 (1949). Nor can this Court overlook the state law issue if it chooses to review this case since, as the analysis above shows, the relief that the courts below granted is based on their acceptance of the state, as well as the federal claim.[9]

2. In any event, the court of appeals' application of the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. 6001 *et seq.*, the first appellate decision to apply this statute, was correct. The Act is the culmination of congressional actions taken over a number of years for the purpose of improving the care and training of developmentally disabled

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[9] Petitioners argue that the court of appeals' requirement that the district court "engage in a presumption that individuals should be placed in [community living arrangements]" (Pet. App. 159a) is derived solely from the Developmentally Disabled Assistance and Bill of Rights Act. But the court of appeals explained (Pet. App. 157a) that the intent of the Pennsylvania law is "to make it possible for every mentally disabled person to receive the kind of treatment he needs, when and where he needs it." Both state and federal law, the court held, make it "fitting that the Commonwealth be required to undertake a case-by-case investigation into how each person's rights may best be facilitated" (*ibid.*). In this context, the direction to "engage in a presumption" simply requires a method of proceeding with individual determinations that is consistent with Pennsylvania's acceptance of the policy of normalization (see *supra*, pages 8-9).

persons.[10] See H.R. Rep. No. 95-1188, 95th Cong., 2d Sess. 3-7 (1978). The 1975 amendments, in addition to providing federal funds for centralized planning and coordination of the various services provided by a state to developmentally disabled persons, create rights enforceable in federal courts: 42 U.S.C. 6010 (1) and (2) announce the right of the developmentally disabled "to appropriate treatment, services, and habilitation for such disabilities" and to have "treatment, services, and habilitation * * * designed to maximize the developmental potential of the person * * * in the setting that is least restrictive of the person's personal liberty."

The legislative history cited by the court of appeals (Pet. App. 132a-135a) establishes that the Act expresses a preference for deinstitutionalization of mentally retarded persons. Institutionalization is allowed only if it provides "treatment, services and habilitation which is appropriate to the needs of such persons" and meets the minimum standards specified in 42 U.S.C. 6010(3). Thus, the court of appeals followed the congressional purpose and intent by requiring that only those persons who need institutionalization should be placed at Pennhurst and that the offending conditions there should be eliminated.[11]

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[10] Mental retardation is a developmental disability within the contemplation of the Act (42 U.S.C. 6001(7)).

[11] The petition of the county officials suggests that the decision of the court of appeals "establishes a right in 6.75 million retarded citizens [throughout the United States] to receive habilitative services in the least restrictive setting." 79-1415

The rights secured to mentally retarded persons by Section 6010 are judicially enforceable through civil actions such as this. This Section was the product of a conference of the two Houses of Congress, and in the conference report (H.R. Conf. Rep. No. 94-473, 94th Cong., 1st Sess. 42 (1975)) the section was described as being included "in recognition by the conferees that the developmentally disabled, particularly those who have the misfortune to require institutionalization, have a right to receive appropriate treatment for the conditions for which they are institutionalized, and that this right should be protected and assured by the Congress and the courts."

In 1978, 42 U.S.C. 6010 was amended by Pub. L. No. 95-602, Section 507, 92 Stat. 3007, to add:

> The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

Pet. 8 n.5. But the opinion below adjudicates only the rights of the class, consisting of "current residents of [Pennhurt, and] all mentally retarded residents of the five counties of southeastern Pennsylvania who might in the future be placed in Pennhurst" (Pet. App. 96a). The court accordingly focused on the rights of those institutionalized at Pennhurst, and concluded that when the state accepts the responsibility for the care of the mentally disabled and accepts federal funding under the Act to assist in performing that responsibility, it must provide that care in a manner consistent with the Act. The court did not consider, much less adjudicate, the quite different question whether the state must provide for the care of all its mentaliy disabled citizens.

This addition dispels any argument that the rights described in Section 6010 are simply declarative of rights granted elsewhere in the Constitution or statutes. It also fully answers petitioners' arguments that the Act is no more than a funding statute. Congress also intended in the Act to create a private cause of action for the benefit of the developmentally disabled.[12] The court of appeals was accordingly correct in concluding (Pet. App. 115a-117a) that this statute satisfies this Court's criteria for the implication of a private cause of action. See *Cort* v. *Ash*, 422 U.S. 66, 78 (1975); cf. *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979); *Touche Ross & Co.* v. *Redington*, 442 U.S. 560 (1979); *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, No. 77-1645 (Nov. 13, 1979).

3. The district court allowed the United States to intervene in this action under Rule 24, Fed. R. Civ. P., presumably under part (b), governing permissive intervention. The court of appeals concluded that "[c]learly, * * * the district court did not abuse its discretion in permitting [that] intervention" (Pet. App. 103a). There is no need for further review of that question by this Court; this Court's resolution of that question would affect neither the findings of statutory violation nor the relief ordered by the court below.

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[12] This dual intent is emphasized in the short title of the Act. Had Congress intended to enact *only* a funding statute, it would scarcely have called it the "Developmentally Disabled Assistance and Bill of Rights Act." Pub. L. No. 94-103, Section 1, 89 Stat. 486.

There was, in any event, no "clear abuse" of the district court's discretion warranting the reversal of its decision to permit intervention. See *Allen Calculators, Inc.* v. *National Cash Register Co.*, 322 U.S. 137, 142 (1944). The United States provides a large portion of the funds for the operation of Pennhurst through the Social Security Act, Title XIX, 42 U.S.C. 1396d *et seq.*, even though Pennhurst has never fully met standards set by federal regulations for receipt of those funds (Pet. App. 19a n.14). While at the time of intervention the suit was cast in constitutional terms, it was unmistakably directed toward the conditions at Pennhurst (Pet. App. 47a). As such, it raised issues affecting the interests of the United States reflected in Social Security Act funding and the related regulations. Following the United States' intervention, the suit quickly became one where the principal claims rest upon federal statutes that impose substantial responsibilities on the Department of Health and Human Services. See, *e.g.*, 42 U.S.C. 6062, 6063, 6065. Rule 24(b) provides:

> When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency * * * the officer or agency upon timely application may be permitted to intervene in the action.

Thus, the rule expressly permits government intervention when a claim arises such as the one decided by the court of appeals.[13]

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[13] Rule 24(b) is designed to allow trial courts to consider governmental intervention "with a fresh and more hospitable

Despite petitioners' claims (79-1404 Pet. 18-19) there is no conflict between the decision below and *United States* v. *Solomon*, 563 F.2d 1121 (4th Cir. 1977), and *United States* v. *Mattson*, 600 F.2d 1295 (9th Cir. 1979). The United States initiated those cases based on an implied right of action to enforce constitutional rights of institutionalized persons. Cf. *United States* v. *City of Philadelphia*, 482 F. Supp. 1248 and 1274 (E.D. Pa. 1979), appeal pending, No. 80-1348 (3d Cir.); *United States* v. *Elrod*, No. 76-C-4768 (N.D. Ill. May 16, 1978), appeal pending, No. 79-1394 (7th Cir.). The holding that there is no such implied right to initiate suit does not apply to intervention explicitly allowed by Rule 24(b).[14] Moreover, *Solomon*, *supra*, 563 F.2d at 1125, 1129 (concurring opinion) and *Mattson*, *supra*, 600 F.2d at 1299 n.6, both recognize the authority of the United States to sue to enforce conditions of federal grants.[15]

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approach," *Nuesse* v. *Camp*, 385 F. 2d 694, 705 (D.C. Cir. 1967), even though a government "claim or defense" in the usual sense may not be present. See *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 459 (1940); 3B *Moore's Federal Practice* ¶ 24.10[2] (2d ed. 1980).

[14] In any event, Congress has enacted H.R. 10 (126 Cong. Rec. S4628 (daily ed. May 6, 1980), 126 Cong. Rec. H3500 (daily ed. May 12, 1980)) which, if signed by the President, will effectively overrule *Solomon* and *Mattson* by giving the Attorney General explicit authority to sue to protect the constitutional rights of institutionalized persons.

[15] Under the Developmentally Disabled Assistance and Bill of Rights Act, "[t]he Federal Government * * * [has] an obligation to assure that public funds are not provided to any institutional * * * program" that does not comply with the Act. 42 U.S.C. 6010(3).

4. Petitioner in No. 79-1489 urges this Court to grant certiorari to consider whether the courts below properly refused to divide the class into subclasses, *i.e.*, those who "believed that the closing of Pennhurst would cause considerable harm" (79-1489 Pet. 18) and those who seek the removal of all residents from Pennhurst. However, whether or not there should have been such a division is now irrelevant. The court of appeals ruled that the district court had incorrectly required the closing of Pennhurst, the only issue on which the opinion of the class is alleged to have been divided; the court of appeals did require improvement of living conditions there for those who remain, or who may be placed there in the future, "an objective with which no resident of Pennhurst could disagree" (*ibid.*). To implement the court of appeals' order, what remains is the proper assignment of individual class members either to community placement or to Pennhurst. This, however, requires a determination of the "special needs and desires of individual patients" (Pet. App. 159a)—not a class question at all.

5. Petitioners in Nos. 79-1404, 79-1408 and 79-1415 challenge the propriety of the relief granted as inconsistent with principles of federalism.[16] None of

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[16] In No. 79-1404, it is urged that the use of a master violates Rule 53, Fed. R. Civ. P. However, it is common and entirely proper for courts to employ masters to assist them in devising the specific and necessary measures to effect a complex remedy. *E.g.*, *Gary W.* v. *Louisiana*, 601 F.2d 240, 244-246 (5th Cir. 1979); *Morgan* v. *Kerrigan*, 530 F.2d 401, 427 (1st Cir.), cert. denied, 426 U.S. 935 (1976); *Cruz* v. *Hauck*, 515 F.2d

these contentions merit review here. If, as the court of appeals held, petitioners have violated rights secured to plaintiffs by state and federal law, it is the duty of federal courts "to adjust their remedies so as to grant the necessary relief." *Bell* v. *Hood*, 327 U.S. 678, 684 (1946). While considerations of federalism may militate against permitting certain civil actions to lie, *e.g.*, *Rizzo* v. *Goode*, 423 U.S. 362 (1976), it has never been thought that those principles preclude an equitable remedy necessary to bring about the realization of rights found to exist and to have been violated. *Milliken* v. *Bradley*, 433 U.S. 267, 281-282, 291 (1977).[17]

322, 328-331 (5th Cir. 1975), cert. denied, 424 U.S. 917 (1976); *Davis* v. *Watkins*, 384 F. Supp. 1196 (N.D. Ohio 1974); *Pennsylvania Ass'n for Retarded Children* v. *Pennsylvania*, 334 F. Supp. 1257 (E.D. Pa. 1971); *Hart* v. *Community School Bd. of Brooklyn, N.Y., School Dist. #21*, 383 F. Supp. 699, 766-767 (E.D. N.Y. 1974).

[17] Moreover, the district court's order, as affirmed by the court of appeals, directs the petitioners themselves to develop the individualized program plans for the members of the class, and to make and monitor suitable living arrangements for each class member (Pet. App. 79a-80a, 151a). The master's responsibility is to assure that these plans and arrangements are consistent with the court's orders and are implemented (Pet. App. 81a-82a). Thus, contrary to petitioners' claims (79-1404 Pet. 16-17; 79-1408 Pet. 11-12; 79-1415 Pet. 16-17; 79-1489 Pet. 7-9), the court's order does not deprive petitioners of their responsibility for supervising the care and treatment of the mentally disabled; it simply assures that the responsibility will be exercised in accordance with the governing statutes.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1980

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